

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2017-052286

09/13/2018

HONORABLE BRUCE R. COHEN

CLERK OF THE COURT
W. Tenoever
Deputy

STARLIGHT TRAIL HOMEOWNERS
ASSOCIATION

EMILY H MANN

v.

ACHRAF ELGAMAL

CHRISTOPHER D GRAHAM

JUDGE BRUCE COHEN

ORDER GRANTING SUMMARY JUDGMENT

Northeast Regional Court - Courtroom 112

9:38 a.m. This is the time set for Oral Argument on Plaintiff's Motion for Summary Judgment. Plaintiff Starlight Trail Homeowners Association is represented by counsel, Emily H. Mann. Defendant Achraf Elgamal is represented by counsel, Christopher D. Graham.

A record of the proceedings is made digitally in lieu of a court reporter.

Arguments are heard.

IT IS ORDERED taking Plaintiff's Motion for Summary Judgment under advisement.

10:34 a.m. Matter concludes.

LATER:

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The Court has considered Plaintiff's Motion for Summary Judgment filed on March 14, 2018, along with Defendant's Response, Plaintiff's Reply and the oral argument conducted on September 13, 2018. The court finds and orders as follows:

Statement of Case

Defendant owes certain amounts as part of his homeowners' association responsibilities. Plaintiff has brought action against Defendant for past due amounts and resulting costs and fees. Plaintiff is seeking summary judgment as to the amount owed for past due assessments and the resulting accrued late fees.

Principles of Law

Summary Judgment Generally

The law is well settled that a motion for summary judgment should be granted "if the facts produced in support of the claim or defense have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim or defense." *Orme Sch. v. Reeves*, 166 Ariz. 301, 309 (1990); Ariz. R. Civ. P. 56(a)(1). All facts and reasonable inferences flowing from those facts are viewed in the light most favorable to the party against whom summary judgment is sought. *Gipson v Casey*, 214 Ariz. 141, 142, 150 P.3d. 228, 229 (2007).

For summary judgment motions filed by a defendant, if the moving party demonstrates that there is no genuine issue of material fact, the burden shifts to the non-moving party to "come forward with evidence establishing the existence of a genuine issue of material fact that must be resolved at trial." *Nat'l Bank of Ariz. v. Thruston*, 218 Ariz. 112, 115, 180 P.3d. 977, 980 (2008) (App. 2008).

However, when summary judgment is sought by plaintiff, there is no such shifting of burden. "[T]he mere absence of a genuine dispute as material fact does not automatically entitle a plaintiff to judgment—the plaintiff must also demonstrate that the evidence entitled it to judgment as a matter of law." *Wells Fargo v Allen*, 231 Ariz. 209, 213, 292 P.3d. 195, 199 (2012). Quoting from *Comerica Bank v Mahmoodi*, 224 Ariz. 289, 292, 229 P.3d. 1031, 1034 (2010), the *Allen* court reasoned as follows:

Frequently, a motion for summary judgment involves an assertion by a defendant that the plaintiff has insufficient evidence to meet its burden of production at trial. The well-accepted logic of the argument is that because plaintiff cannot establish a prima facie case worthy of submission to a jury,

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defendant is necessarily entitled to judgment as a matter of law. The fallacy of Comerica's argument here lies in its assumption that the inverse of the logic underlying a defense motion holds true for a plaintiff's motion. It is not the law that where the plaintiff *does* establish a case that would warrant submission to a jury, it is necessarily entitled to judgment as a matter of law in the absence of rebuttal evidence by the defense. *Allen* at 213, 199.

Specific Statutory Authority

For the issue presented, the court is bound by the provisions of ARS Section 33-1807(J), which provides as follows:

Notwithstanding any provision in the community documents or in any contract between the association and a management company, **unless the member directs otherwise, all payments received on a member's account shall be applied first to any unpaid assessments**, for unpaid charges for late payment of those assessments, for reasonable collection fees and for unpaid attorney fees and costs incurred with respect to those assessments, in that order, with any remaining amounts applied next to other unpaid fees, charges and monetary penalties or interest and late charges on any of those amounts. (emphasis added).

The issue before the court is whether there are any genuine issues of material fact regarding payments made and amounts owed by Defendant, after analyzing the applicable law.

Factual Findings and Legal Analysis

It is factually undisputed that Defendant owns property located at 810 South 111th Drive in Avondale. It is further undisputed that this property is subject to a homeowners' Declaration and among the obligations is the payment of a monthly assessment of \$75 by each homeowner.

Defendant previously fell behind in the payment of monthly assessments and Plaintiff took legal action. Eventually, a Judgment was secured in September, 2015. Since that time, there were payments made and additional monthly obligations that accrued.

Defendant made two payments on or about October 2, 2015, each for \$75. He specifically noted that one payment was to be applied against his on-going monthly assessment (which was properly credited against the October, 2015 assessment) and the other was to be applied against the October, 2013 past due assessment that became part of the 2015 Judgment.

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In June, 2017, Defendant made two more payments, one for \$1,000 and the other for \$875. He noted thereon that that these payments were to be applied against the “assessment balance.” Plaintiff asserts that what was intended was for these payments to be applied only against post-Judgment assessments. He maintains that since this is disputed, it constitutes a genuine issue of material fact. This assertion is erroneous.

First, the amount that Defendant owed in assessments accruing (less payments made) from October 1, 2015 through June of 2017 was \$1,575. If Defendant’s claim that the payments made in June of 2017 were intended only for post-Judgment accruals is to be given consideration, it would require the court to conclude that he was pre-paying \$300 of future assessments (since he actually paid \$1,875 at that time against an obligation that totaled only \$1,575). This would be contrary to what he denoted on the check, that being that the payment was against the assessment balance.

Factually relevant is the payment made by Defendant on May 25, 2018. He paid \$975 and designated the payment to be applied against the balance due for assessment and late fees since July 1, 2017. Defendant was clear as to what outstanding balance was to be credited. This payment was properly applied by Plaintiff, as Defendant directed. Therefore, when this clear direction is combined with how Defendant designated other payments (such as the October 2015 payment of \$75 that Defendant directed be applied against the October, 2013 obligation), there is no basis to look beyond what he specifically directed on the two payments made in June of 2017; that being to apply the payments against the assessment balance.

Lastly, ARS Section 33-1807(J) does not provide for interpretation of intent when a payment is received by a homeowner’s association. It states that the payment shall be applied first to unpaid assessment “unless the member directs otherwise...” Here, Defendant either directed that the payment go against unpaid assessments or failed to sufficiently specify how the payments were to be applied by not being clear about its application. In either event, the result is the same.

Defendant cannot after-the-fact claim his direction to be other than as specified. He had the power and opportunity to further specify how the payment was to be credited, similar to what he did with one of the two payments he made in October of 2015 as well as the payment made in May of 2018. His claimed lack of specificity when making the June 2017 payment does not then allow him to present evidence of intent; at best, the claimed lack of clarity causes the triggering of the statute’s mandatory language of applying undirected payments against unpaid assessments. In either case, the amounts paid in June of 2017 would be applied against both the pre and post 2015 Judgment unpaid assessments.

The court has considered the facts in the light most favorable to Defendant. Even in that context, this is not truly a fact question, as alleged by Defendant. The facts are not materially

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disputed. Rather, it is a legal question as to how the law would be applied to those facts. Here, the undisputed facts are that Defendant directed Plaintiff to apply his June 2017 payments against unpaid assessments, and that is precisely what Plaintiff did.

Therefore, summary judgment is an appropriate method for addressing the dispute. Plaintiff has met its burden to demonstrate entitlement to summary judgment.

Ruling

IT IS ORDERED granting Plaintiff's March 14, 2018 Motion for Summary Judgment. Plaintiff is entitled to Judgment in the amount of \$1,650 in unpaid assessments through September, 2018 and \$345 in late fees accruing since October 1, 2015, for a total of \$1,995.

Plaintiff may also be entitled to an award of attorney fees and costs. To address this issue, as well as fines or other financial entitlements beyond assessments and late fees, Plaintiff shall file its application by no later than October 15, 2018. Defendant shall then file any objection thereto by no later than November 6, 2018. Plaintiff shall have until November 19, 2018 to file any responsive pleading to Defendant's objection.